

Delegate Macdonald, you have an amendment that you desire to offer?

DELEGATE MACDONALD: I do, Mr. Chairman.

THE CHAIRMAN: Very well. The page will distribute the amendment, BI. Please mark this Amendment 15. The Clerk will read the amendment.

READING CLERK: Amendment No. 15 to Committee Recommendation JB-1, by Delegate Macdonald: On page 4 section 5.11 Commissioners in lines 3 and 4, strike out the following, "and then only as prescribed by rule".

THE CHAIRMAN: The amendment having been seconded, the Chair recognizes Delegate Macdonald to speak to the amendment.

DELEGATE MACDONALD: Mr. Chairman, fellow delegates, first I wish to emphasize what this amendment will not do. It will leave intact the appointment of the commissioners, and the subject matter area in which they may act.

Now as to what it will do. The amendment proposes to strike from page 4 the words on lines 3 and 4, "and then only as prescribed by rule". This would mean that the manner in which the authority of the commissioners to issue warrants of arrest, prescribe bail, collateral and decide whether a person should be incarcerated pending hearing or not could be determined either by rule adopted by the Court of Appeals with its rule-making authority, or by the General Assembly by law.

Referring your attention again to section 5.31 of this article, you will see that as to practice and procedure in the courts for the most part, the rule-making authority of the Court of Appeals is shared concurrently with the General Assembly; either the General Assembly or the Court of Appeals may enact the rule. The concurrent power prevails. This may go on in an endless chain but as already pointed out, this current system has worked remarkably well. The present rules of procedure which are in effect in the State of Maryland were adopted under this concurrent power system. They are an excellent set of rules. Very seldom is there a clash between the General Assembly and the Court of Appeals. When there is, they work it out to the mutual satisfaction of everyone.

Now, there are many less important matters of practice and procedure that are subject to the concurrent rule system. For instance, the form of action which must

be brought in the court, the form and content of the pleadings, in what county must be brought, the procedures for trial discovery, the procedural rules the conduct of the trial, motions which may be made during trial and after trial, must sign the bill of complaint—all these matters are subject to the concurrent rule of the General Assembly and the Court of Appeals.

When it comes down to matters such as the issuance of warrants of arrest, bail, collateral, and incarceration pending hearing, we may be dealing in an area which is strictly procedural; in other words, in which the Court of Appeals and the General Assembly should have concurrent power, or we may be dealing in an area which is a matter of substance. Certainly if a man is arrested and he is held in jail for 12, 15, 20, or more hours, even for three or four hours before hearing, I think he would think that that was substantive.

Until rules are promulgated with regard to warrant, issuance of warrants of arrest, bail, et cetera, we really cannot tell whether they are substantive or procedural. If they are substantive, or to the extent that they are substantive, they should be left exclusively to the General Assembly, and the Court of Appeals should have no authority to act in that respect whatsoever. We agree that the legislative body is the General Assembly and that the Court of Appeals can pass rules on practice and procedure only.

So the effect of my amendment would be to eliminate the requirement that this be done only by the Court of Appeals. It would allow either the General Assembly or the Court of Appeals to adopt rules and regulations on the subject. Since it gets close to the substantive, as a matter of fact, sometimes quite substantive depending upon how the rule is written, we should leave it flexible so that either the General Assembly or the Court of Appeals could adopt appropriate rules on the subject.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, ladies and gentlemen of the Committee of the Whole: I am forced to rise in opposition to the amendment and to explain that it is contrary to the view of the majority in submitting the report which you now have before you for consideration.

Delegate Macdonald has pointed out rather clearly the difference between